THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 4201 of 2003

Oral order:

The petitioner, by this writ petition, seeks a Writ of Certiorari, calling for the records pertaining to the award dated 29.01.2002, passed by the Industrial Tribunal-cum-Labour Court, Anantapur, in I.D. No. 219 of 1999, and quash the same.

The petitioner joined the services of the respondents-A.P.S.R.T.C as Cleaner in 1990. He was promoted as Conductor in the year 1992. On 29.11.1997, while conducting the bus on the route Kalyandurg to Kasapuram, a check was exercised, and certain cash and ticket irregularities were found. The petitioner was issued charge memo, and later by orders dated 05.12.1997, he was charge sheeted and placed under suspension. The petitioner submitted his explanation, but the respondents dissatisfied with the explanation submitted by the petitioner, conducted an enquiry. The Enquiry Officer having conducted the enquiry submitted his report holding that the charges leveled against the petitioner are proved. Based on the enquiry report, respondent No.1-Depot Manager, Kalyandurg, passed orders dated 03.07.1998, removing the petitioner from service. The appeal and review petition filed by the petitioner assailing the order of termination, were rejected vide orders dated 26.12.1998 and 17.07.1999 of the appellate and reviewing authorities. Assailing the said orders, the petitioner raised an industrial dispute in I.D. No. 219 of 1999, which by reason of the award impugned in this writ petition, was dismissed.

The learned counsel for the petitioner submitted that the petitioner could not issue tickets to some of the passengers as the bus was over-crowded. It was not his intention not to issue tickets to the passengers. The passengers boarded the bus in batches, and they got scattered here and there. The passengers, who were found to be not possessing the tickets, themselves stated that they did not take the tickets as they were under the impression that their colleagues had taken their tickets. He submitted that the petitioner having not collected any fare from the ticketless passengers, and he having not misappropriated any amounts, the order of removal passed against

him by the disciplinary authority, as confirmed by the appellate authority, reviewing authority and the Labour Court, is harsh and disproportionate to the proved charges. In support of his arguments, he placed reliance on the judgment of this Court in **A.P.S.R.T.C. Cuddapah Depot v. The Presiding Officer, Labour Court**[1], and of the Gujarat High Court in **AMC v. Mahendrabhai Jayantibhai Shukla**[2] and **Banco Products (India) Ltd. v. Pravinchandra Bhogilal Patel**[3].

The learned Standing Counsel for the respondents-APSRTC on the other hand contended that the petitioner having collected fare from the passengers, did not issue tickets, and this fact was proved in the departmental enquiry. Having regard to the nature of proved charges, the disciplinary authority ordered removal of the petitioner from service, which was confirmed by the appellate authority, reviewing authority and the Labour Court, and no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The parameters and scope of judicial review of this Court under article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is further well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. The apex Court in **Surya Dev Rai v. Ram Chander Rai**[4], held that certiorari under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Therefore, it is within the parameters, as stated above, the

impugned award of the Labour Court, has to be examined

The petitioner, admittedly, did not assail the validity or otherwise of the departmental enquiry on the ground that it was not conducted in accordance with the procedure, and as such, it is not open for the petitioner to question the findings of the enquiry. Though the petitioner contends that he has not collected any fare from the passengers, who were found to be traveling without tickets, the fact remains, in the enquiry, all the 13 ticketless passengers, had categorically stated that the petitioner had collected the requisite fare (Rs.115/- from five passengers, Rs.20/- from five passengers and Rs.9/- from three passengers) at the boarding point itself and did not issue tickets to them. Thus, it is clear that the petitioner had not issued tickets worth Rs.144/-, and the fact that he had collected the said fare from the passengers without issuing tickets to them, clearly reveals his intention of misappropriating the said amount. In that view of the matter, it cannot be said that the petitioner had not collected any fare from the passengers, who were found ticketless, and having regard to the proved charges, which are serious in nature, the disciplinary authority imposed punishment of removal from service, which was confirmed by the appellate authority, reviewing authority as well as the Labour Court.

It is the contention of the petitioner that the punishment of removal from service, is disproportionate to the proved charges. Imposition of punishment is in the domain of the administrator, and it can be interfered only when it is shown that the decision taken by the administrator suffers from procedural impropriety or the punishment imposed is shocking to the conscience. In **V. Ramana v. A.P.SRTC**[5], the apex Court held that Courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[6], the apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. On the question of quantum of punishment, the apex Court held as follows:

> Coming to the question of quantum of punishment, one should bear in mind

the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.

The petitioner, as stated earlier, was found to have collected fare of Rs.143/- from 13 passengers, and failed to issue tickets to them, thus revealing that he had an intention to misappropriate the amounts, and the disciplinary authority, having lost confidence in the petitioner, removed him from service, which was confirmed by the appellate authority, reviewing authority, and having regard to the past conduct of the petitioner, which showed that the petitioner is a habitual offender, and despite giving opportunities failed to mend his ways, the Labour Court, upheld the order of removal, which having regard to the proved misconduct, which is serious in nature, cannot be said to be disproportionate, warranting interference therewith by this Court.

In the result, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 21st July, 2006.
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[1] 1998 (2) An.W.R. 485

[2] 2001(5) SLR 490 (Guj)

[3] 2003 (3) SLR 242 (Guj)

[4] AIR 2003 SC 3044 =2003 AIR SCW 3872

[5] (2005) 7 SCC 338

[6] (2005) 3 SCC 254